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International Court of Justice

H1245 - 0002

Final Pleading

for Dr. Wilhelm Frick

presented by the Defense Counsel, Dr. Otto Pannenbecker, Attorney-at-law

Mr. President, Gentlemen of the Tribunal:

The prosecution has charged defendant Frick with criminal actions according to Article 6, items a, b, and c of the Statute.

I should like first to examine the question whether Art. 6 of the Statute, with the series of penal cases contained therein, is to be considered as the authoritative criterion of the actual penal law which shall state, in a manner irrevocably binding for the Tribunal, those actions that are to be regarded as criminal, or whether Art. 6 of the Statute concerns a rule of procedure defining the competence of this Tribunal for specific situations.

This latter concept has been implied in the prosecution's exposition of the case by Sir Hartley - Shawcross'[1]) remark that Art. 6 fills a gap in international penal procedure but that the actual penal law to be applied to the defendants has already been previously standardized by positive laws. Equally to the point is Part II of the Statute, beginning with Art. 6 and entitled: "Competence and general principles", and it may be inferred therefrom that Art. 6 purports to establish a ruling as to the competence of this Tribunal to engage a procedure for specific series of crimes.

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1) Stenographic minutes of 4 Dec 45, forenoon,
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Sir HARTLEY SHAWCROSS' statements were directed against the objection that it is inadmissible and in contradiction with a basic legal principle, to punish someone for an act which had not yet been forbidden at the time of its perpetration; an objection which has as a basis the conception that the Statute has created a new material penal law with retroactive effect.

It must be tested if the interdiction of retroaction of penal laws is so important a legal principle that it should not be infringed. I need not state to the Court the reasons for which this legal principle found general recognition in all civilized countries, as a presupposition and a basic precept of Justice.

In contradiction to this the Prosecution has in its speech charged the defendants with the fact that they themselves had continuously disregarded law and justice, and inferred from this that the defendants in this trial could not as far as they were concerned appeal to such a legal principle. I do not believe, however, that such an argument can be decisive in these legal proceedings.

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The prosecution has denied the still more farreaching question if it would not have been better to repay a person with the same coin and not give the defendants of this trial any possibility at all to defend themselves in an ordered legal procedure. However such an attitude, simply to apply the power of the victor on the defendants, has purposely not been assumed by the signatory powers for reasons presented in detail by the prosecution. On the contrary, Sir HARTLEY-SHAWCROSS has appealed to the Tribunal to use in this procedure - I quote - "the undisputable basis of international custom". - end of quotation.

However, if one is to proceed in such a manner, than a trial must ensue according to equal principles of law in reference to the question whether the deeds with which the defendant is incriminated are to be regarded as criminal action for which, according to the recognized basis of international custom, punishment is possible. On the basis of international principles of law, there should be no argument if the use of a fundamental law,, as is the prohibition of a retroactive law, in its application is to be made dependent on whether or not the defendants concerned themselves with justice and injustice. The decision of the signatory powers, on the basis of considerations which have been seriously weighed to subject the conduct of the defendants to a judicial examination observing all principles of international custom, signifies not only the adherence to legal procedure equipped with all assurances for fair trial, but this decision by the signatory powers also signifies the observance of the fundamental principles of a materialistic guarantee of justice and to these principles belongs the prohibition of retroactive laws.

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In this connection I should also like to point to the fact that the decreeing of the retroactive validity of penal laws, when so ordered by the National Socialist government for certain, individual cases, aroused horror in the entire civilized world: At that time, the violation of such a principle of law was generally condemned as a deplorable retrogression in culture.

I also ask the Tribunal to bear in mind that one of the first measures taken by the occupation powers for delivery from National Socialist abuses of law, was to declare void any laws instituting retroactive application of the substantive penal code.

In view of this situation, there exist valid reasons, I believe, which argue that according to its caption, article 6 of the chart be regarded an agreement on the jurisdiction of this tribunal, all the more so as the signatory powers have already and with so much emphasis gone on record for a strict and uniform reobservance of the prohibition against retroactive penal laws.

On the basis of such an interpretation, whereby article 6 establishes the jurisdiction of this tribunal, it is up to the tribunal, through its own decision not only to determine whether the charges on which the indictment is based are substantiated, but also to rule on the legal question as to whether, for the facts established in each case by the prosecution, substantive criminal law provides a law which makes punishment possible. To revert in this way to provisions of substantive criminal law in existence at the time the act was committed does not mean it would be impossible for this tribunal to call the accused, to account for offenses which are punishable under all circumstances. There are, however, a number of restrictions resulting from this which in the opinion of the defense, however, it would be better to accept rather than to violate

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a principle so essential to a just procedure as is the prohibition against retroactivity in criminal laws.

I am therefore of the opinion that it is entirely possible and not inconsistent with the need for a just expiation for actual war crimes to interpret article 6 according to its caption as an agreement on the jurisdiction of this court to try criminal cases but not as a new kind of substantive criminal law.

Proceeding from this interpretation of the charter there arises the need for a discussion on how the indictment is to be construed with respect to the conspiracy charged therein. This construction is based on the legal concept of Anglo-American law which determines the responsibility of a plurality of persons differently, and in a more far-reaching way, than the German penal code which contains the principles of law to which the accused were subject at the time when they committed the deed. The German penal code also provides that a person can be held responsible for offenses committed by others when he participated in a common plan which was later carried out by others. But the German penal code places decisive weight on determining the extent to which the acts committed at a later date correspond to the common plan. Since in the serious crimes which are being prosecuted before this court the determination of the form of guilt in the original plan is necessary to make it punishable, later acts of commission by others can be charged against a defendant only to the extent to which they corresponded to arrangements to which the defendant deliberately agreed. A defendant who participated in certain plans can not be held responsible

for subsequent plans of a wider scope,or for acts of commission which far exceeded the original plans without his cooperation.

Responsibility for subsequent plans and acts of commission can be established according to German law only if it can be proved that the defendant, who himself did not participate in these subsequent plans and actions, at the time of his original participation recognized and approved this manner of development and execution and that, in other words, he deliberately encouraged it.

To revert to the example of the prosecution:

He who participates in the plan for robbing a bank is responsible if this plan is carried out even though he does not personally participate in the execution.

But, the person does not at the same time become guilty of premediated if the active members subsequently and without his participation dicuss murdering the guard or should one of the members shoot one of the guards without prior agreement because the latter has caught him in the act.

Nobody can be convicted of premediated murder if he did not participate in a plan to commit murder uness it can be proven that when he participated in the plan for robbingthe bank such killing of a guard was already taken into consideration and that in spite of this he approved the plan for the bank robbery in that case he, too, would, have deliberately contributed to the murder. In other word, according to the provisions of German substantive criminal law there does not exist a liability for so-called excesses of the immediate cuprits or for an unforeseen development of plans not originally conceived on such a wide scope, so that a more far-reaching interpretation in line with

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the concept of "conspiracy" in Anglo-American law, which at the time when the accused committed their deed did not exist, would violate the principle which prohibits retroactive application of penal laws. The charter does not compel the interpretation that a defendant is responsible also for such acts of commission as exceed the measure of his participation in the common plans. The wording of the charter "in the execution of a common plan "does not contradict the interpretation that the charter establishes responsibility for acts of commission which remained within the scope of the plan discussed.

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The acceptance of responsibility for the actions of others correspond to an equal extent to a judicial precept, but beyond it would violate essential legal principles.

The defense therefore advocates the conception that, as far as the actions of others are concerned and for which a defendant is supposed to be liable, the proof cannot be foregone that these actions, in the manner of their execution, have corresponded to the intention of the defendant.

To give an example:

The participation of a defendant in rearmament against the regulations of the Versailles Treaty does not in itself justify the assumption that this defendant has also desired a war of aggression, which was later on planned by others, in the further shaping of the plan to mobilize the German people.

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I should like now to refer to the separate groups of crimes charged against the defendant Frick and namely first, the assertion of the prosecution that the defendant participated in the planning and preparation of wars of aggression. With regard to the problem, as to whether a war of aggression is a criminal offense according to the concepts of law for the period in question, I refer, in order to avoid repetitions, to the statements of Professor JAHREIS, with which, in the name of the defendant Frick, I completely agree.

In virtue of these convincing statements, there is only <u>one</u> possibility of punishing cooperation in a war of aggression as a criminal offense that can be perpetrated by single persons, if, namely, in opposition to the statements of Sir Hartley-Shawcross, the charter is applied as a rule of substantive penal law, which has for the first time, formulated with retroactive effect that a war of aggression is a criminal offense by individual persons. Considering the other interpretation, which regards article 6 of the Charter as a procedural regulation on jurisdiction of this court, the defense holds that the deduction is cogent that the court is indeed declared competent to judge offenses against peace, but that so far a criminal Guilt of the individual defendants is not prover, because one condition for this is lacking, namely, the possibility of establishing that the defendants have offended against a principle of generally valid international custom or national law which characterised the war of aggression at the time of their act and declared it punishable as a crime of which a single individual could be guilty. For the statesmen during the period between the two world wars neglected to establish adequate measures of general validity.

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by which it would have been made clear that anybody who after the first awful slaugther of nations organized second world war would run about with a rope around his neck.

The corresponding statements of the prosecution that such rules of international law are necessary, are absutely compelling, but the fact cannot be overlooked that such rules, however, were not created at the right time.

A missing rule of law cannot be subsequently cut out for a special case, and replaced by a order of procedure or by the sentence of a court, whose task is to apply the general law, but not to create for a single special case. I shall now turn to the actual statements of the presention concerning a participation by the defendant Frick in the planning and preparation of wars, of aggression.

The prosecution sees such an activity in Frick's earliest cooperation with the Party which he continued until the year 1933, in order to bring Hitler to power.

The prosecution appraises in a similar way the subsequent activity of Frick after the taking over of the government by Hitler, when he worked to consolidate the power of the Party and its leader through measures of domestic policy especially by his participation to the legal measures, by which an armed force (Wehrmacht) war created, against the stipulations of the Treaty of Versailles, and finally his collaboration in measures by which direct preparations were made in case of war.

Proceeding from the interpretation that only a deliberate participation of the defendant

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in the preparation of a war of aggression is of penal importance, I shall now enter upon the question as to whether the prosecution has proved that the defendant recoguized his by collaboration in the advancemont of the Party and its aims as a preparation for war, and wanted it to be so, and therefore deliberately helped to bring about war hinself.

In this connection the prosecution has stated that Hitler and his Party from the very beginning openly pursued the aim of bringing about a change in the foreign political situation of Germany, by means of war.

On the basis of this statement the prosecution has declared that no special proof is necessary that each of the defendants, in working for Hitler and his Party, also Knowingly collaborated in the preparation of a war of aggression.

As proof that Hitler and his Party had from the beginning planned a war of aggression, the prosecution refers to the Party program, which names as one of its crims, the abolition of the Treaty of Versailles. With not one word, however, is it said in the Party program that this aim should be achieved by force of arms.

From the Party program, however, as well as it has appeared, among others, from the testimony of the defendant von Neurath, there is nothing to prove an intention existing from the very beginning to wage a war of aggression. Nothing different is found in the official publications of the Party from the time of Hitler's a assumption of the government.

As the Pary did not, on the basis of its official publications, reveal the intention to compel the revision of the Treaty of Versailles by force of arms, it was therefore, ever before 1933 permitted outside the territory of the Reich, as in the year 1930 in Danzig with the assent of the High Commissioner of the League of Nations and of the Polish President.

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Since the time of his assumption of power on January 30th 1933 HITLER as responsible head of the Government, took a quite unequivocal attitude in regard to the ways and aims of his foreign policy, whether in official speeches and discourses or in private conversations.

Unchangingly and upon every occasion he has, since his access to power, stressed his unconditional will for peace and his abhorrence of war, and he always defended this attitude with convincing reasons. He repeated again and again that he intended to obtain certain revisions of the Versailles treaty by peaceful means only.

I need not repeat the apposite quotations from HITLER's speeches, which already have been submitted by the prosecution, to prove to what extent HITLER deceived the world and the people he ruled by his peace speeches, which were repeatedly supported by a peal of church bells to increase their effectiveness.

And the world, including the German people has taken seriously these speeches which he, as responsible Government chief, made again and again.

Warning voices which at an early stage became convinced that HITLER wanted war remained, however, a hopeless minority throughout the world.

The Prosecution has repeatedly stressed this world belief which took HITLER's assertions of peaceful intentions seriously, and the best proof of this peace delusion of even the foreign statesmen who also knew the Party's program, lies certainly in the fact that these statesmen neglected to such a great extent to create defensive armaments against HITLER's war of aggression. Nobody in Germany and in the world who was not directly initiated into HITLER's most secret plans seriously believed in it.

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Final pleading for Dr. Wilhelm FRICK, submitted by defense counsel Dr. PANNENBECKER.

From the Party program and from isolated wild speeches, made before 1933 in the period of parliamentary opposition, it is not possible to prove a continuous preparation for a war of aggression since the twenties, supposedly discernible by anybody who looked the party program through. The Prosecution now pretends further that, even if the warlike intentions were not discernible in a general way, the intention of HITLER to prepare a war of aggression must have been clearly visible to defendant FRICK by reason of the duties which the latter fulfilled since January 30th 1933 in his capacity as Reich Minister for the Interior.

These duties included measures towards the strengthening of the political power of HITLER and his Party at home. In this connection the Prosecution referred to the collaboration of FRICK in the legal decrees by means of which the opposition against HITLER's system of government was destroyed in parliament and in the country, further the legislative measures which eliminated a true self-administration in the cities and rural communities, furthermore legislative and administrative decrees by which opponents of the National Socialist system were excluded from taking any part in the business of the State and in economic life.

The prosecution has submitted that, without these measures, HITLER could not have conducted another war, the beginning of which - promising such success - presupposed of necessity a complete destruction of opposition in the country and the establishment of the absolute dictatorship of HITLER.

Yet in all the measures I have enumerated, any direct connection with the preparation for war is lacking

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These measures had also their meaning and significance without any connection with a forthcoming war, if considered purely as projects on a National Socialist domestic policy. It has not been proved whether the defendant Frick had furthermore been informed of Hitler's further plans after a strengthening of power at home and for pursuing the aims of their foreign policy of the party by other than peaceful means, but to enforce them by war.

By establishing retrospective facts that the increase of his domestic authority was Hitler's pre-supposition for his later known war intentions, nothing has been achieved unless the proof is forthcoming, that Hitler had from the beginning aimed at authorative power in the domestic sphere as a first step towards the carring on of war, and that Frick was aware of this when he took part in the activities of the internal policy of which he was in charge.

Furthermore: as they were purely domestic measures, according to the provisions of the Charter, they do not come under the jurisdiction of this Tribunal.

There is no true evidence, and it must be admitted that Frick as a typical Home Office civil servant considered his measures as absolutely independent drives with us the scheme of domestic policy, which however had nothing whatsoever to do with the solutions by force of questions of foreign policy.
Neither does another view of the situation derive from the measures dealing directly with Germany's rearmanent , i.e. the reintroduction of general conscription and the occupation of the demilitarized zone of the Rhineland.

In his capacity as Reich Minister for the Interior, the defendant issued the orders of the civil administration for the recruitment of men liable for military service, and he therefore himself signed the Armed Forces Law.

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But these measures by themselves could not be considered preparative ones for a war of aggression.

The reintroduction of compulsory military service and the resumption of military sovereignty over the demilitarized Western Zone, was explained by Hitler himself to his collaborators and the world by arguments. The reasoning of which was then widely accepted, and after the first shock many foreign statesmen still believed in Hitler's well-founded assurances of peace, and advocated the presumption that there was no reason to fear any belligerent intentions of Hitler.

I refer to the document 789 Ps - U.S.A. Exhibits No. 23 - according to which on 23 November 1939 Hitler personally declared to his Commanders-in-Chief that he had created the Wehrmacht in order to make war.

But Hitler cleverly obscured this intention by another argumentation which even at that time still found credence in Germany and abroad and - as proved by the evidence - even his collaborators in his own Cabinet who had not been initiated into his secret plans, believed in it.

It thus happens that several defendants refer to the fact that they agreed in the reconstruction of the German Wehrmacht, though contrary to the provisions of the Versailles Treaty, but that they never wanted another war and did not consider that by collaborating they would contribute to the planning of a war of aggression.

As to the defendant Frick: according to the conception of his defense no proof was given that Hitler had informed him of his belligerant plans, and he therefore cannot be charged with collaborating in the reconstruction of the Wehrmacht as an intentional contribution to the planning of a war of aggression.

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defense counsel Dr. Pannenbecker

A familiar situation arises from the defendant's activity in establishing the civil administration in general in the event of a possible war, a task with which the defendant was charged as a General Plenipotentiary for the Administration of the Reich "by the second Reich Defense Law dated 4 September 1938.

I beg to emphasize that the position of "General Plenipotentiary for the Administration of the Reich" was only created by the second Reich Defense Law of 4 September 1938, thus had not been included in the first one of 31 May 1935.

Long before, even before 1933 Ministerial Counsellors held conferences dealing with the subject: "Reich defense", and which, since 1933 met at irregular intervals as "Commission for the Defense of the Reich", as stated in the documents submitted by the prosecution. These meetings had nothing to do with an agreement to wage war of aggression, they dealt with general questions of Reich Defense Law of 21 May 1935 the organization for Reich Defense was more closely coordinated, particularly by the appointment of the General Plenipotentiary for the War Economy, and at his interrogation the defendant Schacht explained in detail, that the purpose of his assignment was not preparation for a war of aggression according to the tasks and regulations to be found in the first Reich Defense Law, but the organization of economy for defense, in the event of a war of aggression by other States.

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It is not different with the position of the Plenipotentiary General for Reich Administration as it was created by the Reich Defence Law of 4 Sept 1938 which was delegated to the defendant FRICK on the basis of his position as Reich Minister of the Interior.

This position meant the coordinated establishment of the entire civil administration for the purposes of Reich defense. According to documents which have been submitted to the Tribunal, it may have been that HITLER wanted the war at the time when he instigated, but it is nevertheless relevant for the defense of the defendant, whether FRICK at that time was able to recognize the aggressive intentions of HITLER from the law itself and from its preliminary work or from other evidence or information which were communicated to him at that time.

The law itself does not allow the recognition of HITLER's intention to use it as an instrument of preparation for war of aggression in the scop of civil life.

The kind of tasks which were given to the defendant FRICK in his capacity as Plenipotentiary General for Reich Administration had to do merely with the concentration on the domestic administration of Germany in case of a possible war or of a threat of war.

The mode of expression of the law is such that it speaks only about the defense of the Reich in case of a war. It speaks about the "state of defense" and mentions the case of a "surprise threat to the Reich territory", at which

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occurance certain measures must be taken.

On the other hand the law does not indicate by any hint that HITLER himself planned to bring about a war and according to the repeatedly discussed principle of HITLER - not to divulge his plans anymore to anyone than the respective person had to know for his own work - which principle was strictly adhered to even with his closest collaborators - it should not be assumed nor has it been proved that when giving the order for this law to the Ministry of Interior anything else was communicated than the requirement to take precautionary measures - by means of concentration of powers of the domestic administration of the country - against the possible attack of the Reich territory by other states.

It is not necessary for me to state in detail, that such a measure cannot be considered as premiditated preparation for a war of aggression when the former is declared essential to the competent agencies of the domestic administration for the defense of the Reich against the threatened attack by another state, which HITLER understood to feign very cleverly for all those who did not need to recognize his secret plans and who nevertheless should understand his armament and the organization of the state ordered by him for case of war.

I will deal now very shortly with some further documents which have as their object the activity of the defendant FRICK as Plenipotentiary General for Reich Administration.

FRICK spoke in his speech on 7 March 1940 about this position - Document 2608 PS, USA Exhibit No. 714 - and stated that the planned preparation of the administration for the possible event of a war has been made during the peace by the appointment a Plenipotentiary General for Reich Administration.

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Dr. PANNENBECKER.

This speech therefore merely confirms that which is already revealed by the text of the law.

The same applies to Document 2986 PS - USA Exhibit No. 409 -, an affidavit by the defendant to the same effect.

Neither is, therefore, according to this law, the position of the General Plenipotentiary for the Reich Administration as combined with the appointment of a General Plenipotentiary for Economy and the function of the Chief of the OKW, susceptible of reference as a "Triumvirate" holding governmental authority in Germany.

Nothing has ever been known either inside or outside Germany of a government by such a Triumvirate and witness LAMMERS too has referred to the strictly subordinate tasks performed by these persons by virtue of orders received, tasks which had nothing to do with the preparation of a war of aggression.

Another field of activity of the defendant is likewise taxed by the prosecution as participation in preparation for a war of aggression, namely, FRICK's work for the "Association for Maintaining Germanism Abroad".

I am referring to Documents FRICK Exhibit No. 4 and 3258 PS, the latter submitted as - GB 262 - .

Both documents reveal that FRICK supported the said Association and aided its cultural efforts as a union for the promotion of German cultural relations abroad.

It cannot, however, be gathered from the documents that FRICK extended any activity whatsoever for the furtherance of the aims of a so-called "Fifth Column" abroad.

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submitted by the Defense Counsel Dr. PANNENBECKER.

Another document, from which the prosecution gathered the approval of the policy of the aggressive war by FRICK, is the affidavit of MESSERSMITH, - 2385 PS - USA Exhibit No. 68 - .

This affifavit has been characterized by several defendants as incorrect and the defendant SCHACHT in particular demonstrated at his examination that in essential points it cannot be correct at all.

The prosecution has not been able to subject the witness to a cross-examination.

I raise a protest for FRICK against any use of the Affidavit, all the more so as an additional clarifying questioning of the witness through written questionnaires only led to the result that the witness by using general phrases avoided giving concrete answers to the questions put to him.

The answers in the questionnaires show plainly enough that MESSERSMITH cannot make concrete declaration at all and that he obviously was considerably deceived by his memory in his Affidavit.

This may be due to his old age.

I do not believe that his affidavit, which has been refuted in essential points, can be used for passing legal judgment.

As to the point to be established by evidence, that is whether the defendant FRICK participated in conscious preparation for war of aggression, the prosecution submitted a further document - D 44 - USA Exhibit No. 428.

From this document it is seen that the Reich Ministry of the Interior is supposed to have given a directive in the year 1933, that official publications are not to be drawn up in a form, which might enable people abroad to infer

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an infraction of the Versailles Tacaty from the publication.

This document does not reveal whether actual treaty violations were to be masked with the directives or whether it was only a matter of avoiding the appearance of treaty violations. The same problem exists for Document -- 1350 PS - USA Exhibit Nr. 742. This is the minutes of a conference between the Staff of the S.A. (Storm Troops) and the Reich Defense Minister, who proposed to the SA in the year 1933 to have the budgetary funds of the Reich designated by the Reich Ministry of the Interior for the military training of the SA.

The document does not throw any light upon the attitude of the Reich Ministry of the Interior towards this proposal and if they had accepted same, this again would have proved only that the Reich Ministry of the Interior furthered the Restoration of the Wehrmacht, a fact which, moreover, is already proved.

Thus, all these documents do not furnish proff that the defendant Frick recognized as a preparation for war of aggression the measures ordered by Hitler as necessary for the defense of the Reich.

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During the war, in the year 1941, a few days before the start of the war with the Soviet Union, a conference certainly took place between the defendant ROSENBERG and representatives of the ministries concerning measures in case of a possible occupation of territories of the Soviet Union.

This is shown in document 1039 PS - USA Exhibit No.146, ROSENBERG's report concerning these discussions in which is stated that negotiations took place with "Reich Minister FRICK (State Secretary STUCKART)". These parentheses mean that the Reich Ministry of the Interior was represented in these negotiations by State Secretary STUCKART, therefore that FRICK did not personally participate in the negotiations.

Since the negotiations took place only a few days before the beginning of the war in the East, it is not proven by the document that FRICK himself was informed yet about the negotiations before the beginning of the war, which was then, as it is generally known, proclaimed by HITLER as a necessary measure of defense against an imminent attack by the Soviet Union. It has been clarified by numerours proofs in this trial how much HITLER kept his true aggressive intentions secret, and understood generally how to cover up the true aim of all his political measures throughout the years with thousands of convincing reasons with which he justified the individual measures of his policy of aggression.

There was a very small circle of assistants which HITLER informed about his war plans, but this circle was not selected according to the position of the person concerned in the cabinet or according to his position in the party hierarchy, but exclusively from the viewpoint whether the person concerned had to know the aggressive character of HITLER's general policy or even his detailed plans of aggression in respect to his own tasks in the framework of the preparation of the war.

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Document 326-PS USA Exhibit No.25 shows with what consequence the principle of secrecy has been kept, even toward the older members of the Party and the administrators of important departments of the Reich Cabinet.

Whoever, as the Reich Minister of the Interior, had to carry out only measures in the framework of the preparation for war which could have been the same as tasks of a purely defensive character, was not informed concerning HITLER's aggressive intention in observance of the latter's principle.

For this reason, the presence of the defendant FRICK is not listed in even a single one of these secret conferences in which HITLER informed a circle of selected men about his foreign political plans and his war aims. HITLER has especially accentuated and given reasons for the exclusion of the Reich Cabinet as a governmental body (GREMIUM) in the dochument 326-PS just mentioned. In another record concerning a similar conference, Document L 79 - USA Exhibit No.27, the additional principle is established that no one may be informed about any part of the war plans who does not have to know these plans for his tasks directly. FRICK's name is not only missing from the list of those present in the conferences of HITLER concerning his policy of aggression which took place before the war, but the same applies also to the numerous conferences concerning further war aims and HITLER's aggressive intentions which had been held during the war.

The defendant FRICK was also not informed or included in the work on them concerning the later attacks, as is shown by HITLER's lectures concerning his plans and the appropriate lists of those present.

FRICK, a true specialist of domestic administration who was not

considered competent for military and foreign political questions, was good enough for the establishment of the civilian administration in case of any possible war - according to HITLER's opinion - , the latter's foreign political and military plans were none of the former's business.

However, the prosecution asserts further that the defendant FRICK had determined after the conquest of foreign territories and after their occupation the administrative policy in these territories and that he is responsible for it, and the prosecution considers this asserted activity of the defendant according to article 6, letter a of the statute as "participation in the execution of wars of aggression". According to the presentations of the prosecution, FRICK is said to have exercised an "over-all control" over the occupied territories, especially in his capacity as chief of the "Central Agency" for the occupied territories.

On the basis of the same funtion, he is also said to be responsible for all war crimes and crimes against humanity which have been committed in the occupied and incorporated territories before and during the war, until his recall als Reich Minister of the Interior on 2 August 1943.

It is a question of legal interpretion whether the activity in the administration of occupied territories persuant to article 6, letter a of the statute is to be evaluated as the "execution of wars of aggression," or whether a criminal aspect comes into consideration only under the viewpoint of crimes against the rules of war or against humanity. It appears important to me for the decision of this question that it does not belong to the tasks of an official of a civil administration to examine, after the conclusion of military operations, whether there is a question of a legal or illegal occupation according to the standards of internation law. Such an obligation of examination would mean an overburdening for the department of the civil administration as well as for the administrative chief

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whose activity cannot be designated as illegal for the reason that the territory administered by him had been annexed a short or even a long time ago in violations of the regulations of international law. There is no such obligation of examination in the practice of the civil administration.

The statute also does not force such an interpretation since, under unlimited interpretation, the military operations themselves are to be understood under an execution of wars of aggression, but not the later civil administration of conquered territories.

The punishment of crimes which occured in the government of the occupied territories would not be made impossible, through such an interpretation.

In any case, these crimes are subject to punishment as crimes against humanity or against the rules of war according to the statute.

In addition, it is to be mentioned for which territories in particular the defendant FRICK bears a responsibility.

These are first the territories which were incorporated according the national law within the national borders of the German Reich, which are therefore called the "incorporated territories."

With the national legal incorporation into the Reich, these territories came under the administration of the appropriate Reich Ministries for the departments of domestic administration, but only for these, thus under the authority of the Reich Ministry of the Interior, so that the defendant FRICK'S bears until August 1943 the national legal responsibility of a minister for the domestic administration of these territories.

In the East, this is mostly a question of the territories West-Prussia-Posen - Danzig, thus the so-called incorporated Eastern territories which belonged until the Versailles treaty to the national entity of the German Reich.

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In the East, the Memel district received the same constitutional treatment; in the West the Eupen-Malmedy district and in the Southeast, the Sudetenland.

Furthermore, the country of Austria was incorporated into the national union of the German Reich.

For all these territories FRICK has a share in the laws and administrativ measures which were brought about by the incorporation, and he has the usual responsibility of a Minister of the Interior for the domestic administration of these territories until his dismissal in August 1943.

For the territory of Bohemia and Moravia, however, there was a special government of the protectorate which has been designated as autonomous by the decree concerning the establishment of the protectorate - document 2119-PS - and therefore was not controlled by the Reich Ministry of the Interior.

In a similar way, there was an administration not dependent on the Reich Ministry of the Interior, in the Polish territories which have been collected under the designation "General Government" and have been put under the jurisdiction of a "General Governor". Contrary to the so-called "incorporated Eastern territories", the Reich Ministry of the Interior had no right to issue orders or to take care of administrative matters for the General Government - document 3079-PS which contains Hitler's decree concerning the administration of the occupied Polish territories -

The same is proved in numerous other documents, among them document USSR 223, the Frank diary where he states that no Reich central offices are authorized to intervene in the government of his territory.

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The same applies to all other occupied territories for which a special administration was established under any legal form.

These seperate administrations were not dependent on the correspon ing administrative ministries in the Reich at any given time, but they were under the jurisdiction of the administrative chief of the correspond ing territories, at any given time, and he himself was directly under Hitler's jurisdiction.

This applies to the occupied Soviet Russian territories the entire administration of which a was under the jurisdiction of a Reich Minister for the Occupied Eastern Territories.

The same applies to Norway, where a Reich Commissioner was appointe

In a similar way a Reich Commissioner was appointed for the Nether- lands who was also independent from the Reich Ministry of the Interior was directly under Hitler's jurisdiction.

In Luxembourg, in the Alsace and in Lorraine there were also chiefs of the civil administrations who were not dependent on the Reich Ministry of the Interior, while there was a military administration in Belgium and Northern France which also not dependent on the Reich Ministr of the Interior.

In the same manner the administrative chiefs of the territories which were occupied in the Southeast of Europe were completely independen from the Reich Ministry of the Interior. For a part of the occupied territories there is now, in the appropriate decree concerning the creati of a seperate civil administration, the order that the Reich Minister of the Interior is appointed as the central agency, and from this formulatic the prosecution has deducted a responsibility of defendant FRICK for the administration of all occupied territories,

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as it is stated in the indictment.

The actual tasks of the central agency result from the order concerning the establishment of a central agency for Norway - document 3082-PS - or No. 24 in the Frick document book. The witness Dr. LAMMERS has given a further explanation of the tasks. At that time, it was the primary task of the central agency to put personnel at the disposal of the chief of the civil administrations in the occupied territories, if requested. Therefore, if a civil official was needed for any district, the administration of the district concerned turned to the central agency in the Reich Ministry of the Interior which then put any official from the Reich at the disposal of the chief of the civil administration; the Reich Ministry of the Interior was especially suited for this, since it had at its disposal numerous officials of the domestic administration in Germany.

But the transfer of one official from the own department to another office which alone gives its orders to the official from this moment on, does not establish responsibility for the further activity of this official in his new department for which the Reich Ministry of the Interior could issue no orders whatsoever. An example: If the Minister of Justice lets the Foreign Minister have one of his officials naturally only the Foreign Minister has the responsibility for the further activity of this official, and not the Minister of Justice who has released the official. This activity of the central agency therefore does not justify the assumption of a responsibility for the administration of the occupied territories by FRICK.

The requisitioning of officials for the occupied territories was concentrated in the Reich Ministry of the Interior, that is, as the examination of the witness LAMMERS has proven, the - I quote from the just mentioned document 3082-PS - : "unified cooperation of the supreme Reich authorities with each other and with the Reich Commissioner which is to be brought into unison with the needs of Norway." -

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End of the quotation.

Accordingly, the hearing of evidence for defendants ROSENBERG, FRANK and SEYSS-INQUART, who functioned as chiefs of civil administrations in the occupied territories, has not, on any single occasion, revealed any cooperation of any kind with defendant FRICK either in his capacity of Reich Minister of the Interior or of Director of the Central Office in this Ministry

Now, the prosecution has referred to several documents in order to prove that defendant FRICK exercised extensive control over all occupied territories.

Actually, however, those documents as I have just demonstrated reveal no more extensive administrative activity. Document 3304 PS evidences administrative activity for the annexed Eastern territories.

This coincides with my statement of the case, that the annexed Eastern territories for their internal administration were subject to the Reich Ministry of the Interior by virtue of their constitutional annexation to the Union of nations of the German Reich.

The document, however, bears no reference to the administration of the Eastern occupied territories, i.e., the Government General, or to the occupied Soviet-Russian territories.

The other document submitted, 1039 PS-USA Exhibit No 146 - evidences the transfer of administrative personnel from the department of the Reich Ministry of the Interior to the Reich Minister for occupied Territories, a typical task

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of the Central Head quarters, which I have already discussed. The prosecution has submitted further documents which reveal that the Reich Ministry of the Interior had a hand in the bestowal of German citizenship upon so-called "racial Germans".

Neither does this circumstance, however, evidence any administrative authority of defendant FRICK for the occupied territories but merely a typical activity of a Minister of the Interior, whose department is competent for the general regulations concerning German citizenship, including cases where / persons living outside the Reich territory are involved.

Neither, therefore, can this activity of the Minister of the Interior affecting specific persons in the occupied territories, evidence an extensive administrative policy and a general responsibility of defendant FRICK for the administration of the occupied territories.

In particular, in the occupied territories not annexed to the Reich Territory, FRICK had no authority or competence whatsoever in the circle of tasks of the police.

HITLER directly commissioned HIMMLER to carry out the police work in the occupied territories. Reference can be made in this respect to Document 1997 PS - USA Exhibit No 319 - HITLER's decree concerning police safeguards of the Eastern territories, for which HIMMLER was directly commissioned.

The same is revealed by Document 447 PS - USA Exhibit No 135 - a directive of the OKW, dated 13 March 1941, to the effect that the Reichsfuehrer SS in the occupied Eastern territories is charged with certain duties regarding the execution of which he acts independantly and on his own responsibility.

It is not any different with the police tasks in the other occupied territories, which at times were assigned either to the Reichsfuehrer SS HIMMLER or to the SS and police chiefs who, I repeat, were exclusively under the discipline of HIMMLER, but were however, in many cases,

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actually classified in the range of activity of the civil administration chief involved, the Governor General in Poland for instance. Compare the excerpt from FRANK's Diary entered in the FRICK Document Book under No. 25 also USSR No. 223,

In no case, therefore, were police tasks in the occupied territories under defendant FRICK's jurisdiction.

Consequently, defendant FRICK bears no responsibility for crimes against the laws of war and against humanity in the occupied territories, since he could neither order crimes nor prevent them.

For the territory of the German Reich, I must now exmine the claim of the prosecution as to the responsibility of defendant FRICK for all the measures of the police, including the Gestapo, as well as for the establishment and administration of concentration camps.

May I first refer to the documents submitted by me in evidence which reveal that the Police, including the political police, was in 1933 still the concern of the individual Laender within the Reich, such as Prussia, Bavaria etc.

Accordingly, in Prussia, the Secret State Police (Gestapo) and the concentration camps were established and administered by GOERING in his capacity as Prussian Minister of the Interior. The tasks of the political police were then transferred by a Prussian law dated 30 November 1933 to the office of the Prussian prime minister, which was also managed by GOERING, so that when the offices of Reich and Prussian Minister of the Interior were merged in Spring 1934, FRICK did not assume political police duties in Prussia since these remained much more incumbent upon GOERING,

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in his capacity of Prime Minister.

A similar regulation prevailed in the other Lands where HIMMLER was gradually appointed Special Deputy for Political Police.

During this period, the Reich Minister of the Interior had only the right of so-called "Reich supervision" over the Lands, which FRICK made use of by the enactment of general instructions and legal ordinances, and this is the only point where FRICK, as Minister of the Reich, could exercise any influence on the affairs of the political Police and of concentration camps.

FRICK made use of this possibility, in accordance with his basic attitude as confirmed by witness GISEVIUS, to prevent and repress arbitrary actions of the political police insofar as this was in his power under the circumstances prevailing then.

He endeavoured, by the enactment of provisions of law and procedure to restrict the arbitrary practices of the political police of the states.

I am referring to Document 779 PS submitted by me as FRICK Exhibit No. 6.

This is a decree dated 12 April 1934, containing such restrictive dispositions under the descriptive preamble, which I quote: "In order to counteract abuse occuring in application of protective custody..." End quote.

This is followed by directives to the state governments, forbidding the application of preventive custody in numerous cases in which it had until been improperly applied by the Gestapo.

In this struggle of FRICK against arbitrary actions of the Laender political police the latter were of course the more longwinded for they were under the direction of Goering and Himmler, of whom the "bureaucrat" FRICK - as HITLER disdainfully catled him - could not come within an ace as regards influence with the Party and State.

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For that reason the Political Police of the Laender in its practice frequently disregarded FRICK's legal ordinances. As long as there was reason to hope that through his intervention the wild practice of the Political Police of the Laender could be directed into orderly channels and according to legal prescriptions, FRICK did not stand by idly.

I refer to document - 775 PS, FRICK exhibit No. 9 - a memorandum from FRICK to HITLER - which clearly and unequivocally calls things by their correct name, mentioning legal insecurity, unrest and embitterment, and severely criticizing the Political Police of the Laender because of misuse of the right to order custody in individual cases.

In his testimony the witness GISEVIUS refers to an additional memorandum which he himself drew up for FRICK as a further attempt to restrain and legally control through severe criticism and suggestions the arbitrary practice of the Politicla Police of the Laender.

None of these attempts was of avail because FRICK's political influence was too insignificant and because he could not assert himself against GOERING and HIMMLER and - a thing which at the time could not yet become clear to FRICK - because the practice of GOERING and HIMMLER was essentially in harmony with what HITLER actually wanted himself.

Therefore, the documents submitted by the prosecution, taken in conjunction with the evidence offered by the defense show that in the domain of the Political Police and in ordering custody, FRICK had a certain competency at a time when Police service still was a task entrusted to the individual states. However, this evidence also shows that during that time FRICK's jurisdiction was very limited and it further shows that FRICK, acting within the bounds of his competency became active only in order to take steps against the terror and arbitrary actions of the Gestapo through general

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instructions and through repeated complaints in individual cases so that the conclusion is not justified that FRICK in any way positively participated in the Gestapo's measures of terror and compulsion.

The legal situation changed at a later time.

With HITLER's decree of 17 June 1936 - document 2073 PS, document book FRICK No. 35 - police tasks for the entire Reich were combined and uniformly transferred to HIMMLER whose department was formally made a part of the Ministry of the Interior under the title "Reichfuehrer SS and Chief of the German Police in the Ministry of the Interior."

The Question now is whether this new regulation conferred on FRICK in his capacity as Reich Minister of the Interior any authority of command or whether he was given any power to issue instructions on the Political Police, its offices and functionaries, which could be practically enforced. When HIMMLER in accordance with his own wish and because of his influence on HITLER was appointed Police Chief for the entire Reich there did not exist in Germany a Police or security ministry, properly speaking.

This is the reason why the uniform direction of the Police through HIMMLER in person was formally attached to the Reich Ministry of the Interior.

But HIMMLER wanted to be more than a chief of section in the Ministry of the Interior.

Therefore a position entirely novel in German administrative law was created for him and his purposes. The entire sphere of tasks of the Police was separated from the rest of the activities of the Ministry of the Interior and placed under HIMMLER's special jurisdiction under a newly created title of office which as a government office included the words "Reichfuehrer SS", thereby making it possible for

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HIMMLER by reason of a title of office characterizing him as Reichfuehrer SS, (in other words a party office at highest level) to carry out State Police tasks in that capacity giving him apparent independence from any instructions issued by a minister of state.

In order to accentuate further the independence of his office within the hierarchy of government agencies HIMMLER was given the right, from the very beginning to represent Police matters before the Cabinet on his own responsibility, just like a Reich Minister - which is also brought out in the decree covering his appointment - 2073-PS.

This decree is a prize sample for overlapping of competencies - something which HITLER favored so very much in his government system.

HIMMLER was part of the Ministry of the Interior and as a functionary of the Ministry of the Interior, was formally bound to abide by instructions of the Minister. However, he also was an independent Police chief with the right to represent before the Cabinet on his own responsibility matters pertaining to the Police, thus eliminating FRICK.

In addition to that, his orders simultaneously carried the authority of a Reichfuehrer SS and FRICK had no authority at all to interfere with them.

The actual effects of this involved arrangement brought out in even stronger measure the towering influence of HIMMLER on HITLER:

FRICK repeatedly undertook to intervene in behalf of a safeguard of a safeguard of a well ordered state apparatus, through overall instructions, intended to restrain the arbitrary acts of the Political Police.

As late as 25 January 1938 he tried to curtail admissibility of protective custody through a decree and in a series of cases it forbade its improper application.

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I refer to document 1723 PS - USA Exhibit No. 206 - an extract of which under No. 36 is in the FRICK document book. It prohibited protective custody in lieu of, or in addition to, legal penalty, forbidding its application by police authorities of the medium or lower level and making mandatory prior hearing of the accused person. He decreed periodical examination of continuance of reasons for confinement and on principle forbade application of protective custody against foreigners in regard to whom he left to the police only the authority to expel them from the Reich in case of acts endangering the state.

It is easy to object that the Gestapo in practice disregarded all these instructions of FRICK and that HIMMLER and his subordinates had maintained an absolute power by terror and violence.

This is correct and has been confirmed in detail by the witness CISEVIUS.

The matter of importance to me in the defense of FRICK is something else: to show that FRICK himself disapproved such arbitrary acts and that he tried to do all in his power to oppose such arbitrary acts.

Finally, however, HITLER forbade even this. He informed him through LAMMERS - as confirmed by him as witness - that he was not to concern himself with police matters, that HIMMLER was taking better care of it and that the Police was doing well in HIMMLER's hands.

This is how HIMMLER finally came to have the Police completely in his hands and he also gave outward expression to this, by later dropping with HITLER's consent the qualification in his official title "in the Ministry for the Interior", simply referring to its as "Reichfuehrer SS and Chief of the German Police" which also becomes evident from the testimony of LAMMERS.

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Final Pleading for Dr. Wilhelm FRICK, presented by defense counsel

Dr. PANNENBECKER.

I believe that, in view of the circumstances, the problem of defendant FRICK's responsibility under criminal law for the political police and their arbitrary measures is not established by the fact that the entire police has been formally incorporated in the Reich Ministry of the Interior since the year 1936, as it has been proven that FRICK himself did not participate in arbitrary acts, but tried on the contrary to intervene against such arbitrary practice with his might, which, however, was by no means a match for the personality and the influence of HIMMLER with HITLER.

In order to obtain a just judgment, I request consideration of the actual situation as to commends and power and not the purely external circumstance of a formal incorporation of the tasks involved in the Reich Ministry of the Interior.

In this connection, I must briefly deal with the reference of the prosecution to the fact that HITLER's decree concerning the appointment of HIMMLER as Chief of the German Police - document 2073 PS - had also been signed by FRICK himself.

I believe that the relationship between FRICK and HIMMLER, as well as the differing relation of both to HITLER are sufficiently clear to justify the conclusion, that the appointment of HIMMLER expressed solely an agreement between HITLER and HIMMLER, which FRICK would have vetoed in vain.

We are confronted with the same problem which applies to so many defendants namely the problem of being one of the formal co-signers of an order which was issued by HITLER and which was also formally signed by the chief of a department, although the department chief had no means of exerting influence on the order and could not have prevented it either, since the order, would have gave fully into effect, as a Fuehrer decree.

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Final Pleading for Dr. Wilhelm FRICK, presented by defense counsel Dr. PANNENBECKER.

I now have to deal more fully with several documents, which have been appraised by the prosecution as bearing on actual activity of defendant FRICK within the sphere of tasks of the political police.

I have already dealt with document 3304 PS, to which the prosecution has referred in this connection. It concerns an ordinance about the assignment of a higher Police Chief to the Reichstatthalter (Reich-Governor in the Eastern territories which are incorporated in the State Union of the German Reich, and hence deals with the administrative structure of the Reichstatthalter's office in a part of the Reich.

The mentioned decree therefore falls within the frame-work of the general competence, of the Minister of the Interior and insofar does not prove a special police activity.

Moreover, this decree has nothing to do with any arbitrary acts of the Gestapo.

Along the same line is the decree of 20 September 1936 - document 2245 PS - concerning the appointment of police-consultants with the Prussian provincial administrations, which were also subordinate to the Reich Ministry of the Interior as offices of the general internal Reich administration.

The assignment of a police consultant to the office of the general administration in the province is a measure of the internal Reich administration.

This measure, too, had no connection with arbitrary acts of the Gestapo, and particularly it also does not prove the issuance of any instructions by the defendant to the Gestapo.

The same applies to the documents which have been appraised by the prosecution as bearing on participation of the defendant in the establishment and administration of concentration camps or as an approval of terror methods through the Gestapo.

In the preventation of 22 November 1945, the prosecution referred to document 2533 PS as proof of approval of these

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arrangements by the defendant FRICK.

I do not have to go any further into the contents of the document.

It concerns an article of defendant FRANK in the magazine of the academy of German Law, of which FRICK has erroneously been called the author by the prosecution.

Another document does not have enough value as evidence to be utilized for a legal judgment.

I refer to document 2513 PS, Exhibit No. 235, which contains an excerpt of a speech, which FRICK allegedly made in the year 1927 - but the excerpt of this speech is taken from a provincial Social Democrat newspaper, a small paper opposed to FRICK, the reporter of which thus had no authentic copy of the speech at his disposal - and we all know what mistakes and misunderstandings are also contained in such short reports, the composition of which cannot be checked by the speaker himself.

Thus this document, according to which FRICK is said to have stated that history is written not only with the ballot, but with blood and iron, is not a reliable source.

The prosecution further submitted document 1643 PS - USA Exhibit No. 173 p.

This document refers to the conferences concerning the expropriation of land in order to extend the grounds of the Auschwitz concentration camp.

The general domestic administration is always competent for expropriatio and for this reason, an official from the Ministry of the Interior was called into the negotiations, who stated however - page 2 of the English translation of the document - that he was not authorized to dispose of real property. Thus, one cannot construe from this document any political - police activity of the defendant or an approval of the practice of concentration camps.

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Final Pleading for the defendant Dr. Wilhelm FRICK, presented by the Defense Counsel Dr. PANNENBECKER.

Finally, the prosecution in this connection pointed out that defendant FRICK personally visited the ORANIENBURG and DACHAU concentration camps.

The defendant does not deny the visit in ORANIENBURG in the year 1938 about which witness HOESS testified.

At that time, as witness HOESS himself testifies, the external framework of the camps was still that of military training areas. In any case, an official visitor to the camp at that time could not notice any murders, mistreatments or similar crimes, so that the visit is not a decisive argument for knowledge of crimes in the concentration camps.

On the other hand, FRICK never visited the DACHAU concentration camp, contrary to the testimony of witness BLAHA.

In this, I refer to the testimony of GILLHUBER, who as the constant companion of FRICK would have had to know about such a visit if it had taken place.

I take the liberty of pointing out also that the two other constant companions of FRICK have also been mentioned by me as witnesses, but by the consent of the prosecution were considered as unnecessary by the tribunal for the reason that one of the companions would be sufficient as witness.

At the conclusion of this chapter, I must still concern myself with an assertion of the prosecution which designated FRICK at one time as the chief of the Reich Security Main Office.

I take the liverty of pointing out the testimony of the witness OHLENDORF who stated to the court that the Reich Security Main Office (RSHA) was a creation of HIMMLER, who combined in this office his state police tasks and his functions as Reichsfuehrer SS, with which FRICK had no relationship of any kind and over which he had even less authority to command. The chief of this office was thus only HIMMLER himself.

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I must go further into the charges which are being made against the defendant Frick in respect to the persecution of members of the Jewish race. Frick shared in the legal measures, particularly the NUERNBERG Laws, and in administrative measures, which he regarded as an expression of National Socialist race policy. On the other hand there is no proof that Frick himself had shared in or had known of the measures of physical extermination which, on HITLER'S direct orders, were carried out by HIMMLER and his organizations, and were being kept secret from those who themselves had no part in these frightful events. Furthermore, in his capacity as Minister of the Interior, the defendant is also accused of having participated in the killing of the sick and insane. HITLER'S basic order is contained in document 630 PS, USA exhibit No. 342. This document shows that HITLER did not give a corresponding order to some governmental office but completely outside of the governmental order system of the Ministries - to two single persons, namely BOUHLER and Dr. BRANDT. Contrary to all rules, HITLER did not sign this order himself in an official capacity as Fuerher and Reichchancellor, but used personal stationery with the heading "ADOLF HITLER".

This shows what the witness LAMMERS has confirmed, that HITLER did not give an order for these measures to the Ministry of the Interior or some other governmental office, but to two of his Party members, as also the Party symbol is the only mark on this stationery. On the other hand the documents submitted by the Prosecution prove that complaints were made which also reached the Ministry of the Interior,

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but they do not prove that, in contradiction to document 630 PS, FRICK had a share in the measures for the killings or that he could have stopped them.

After his departure from the Ministry of the Interior, on 20 August 1943 FRICK was appointed Reichprotector of Bohemia and Moravia. Here he was given an order which from the start was entirely unequivocal in its competence. I refer to document 3443 PS also as USSR 60 and No. 29 in the FRICK documentbook, further - 1366 PS, submitted by me as FRICK exhibit No. 5a - furthermore the testimony of the witness LAMMERS. The office of the Reichprotector was originally the unified representative of the Reichpower in the Protectorate.

In actual practice however, the authoritative power passed more and more to FRANK, the Secretary of State for the Reichprotectorate at that time. With the appointment of FRICK in August 1943, through a FUEHRER decree which was not made public, the executive authority was now formally transferred to FRANK, who from that time on received the official title "The German Minister of State in Bohemia and Moravia". The Reichprotector, retained substantially the privilege of representation and right of clemency, the improper use of which by FRICK has neither been maintained nor proved by the prosecution. On the other hand, FRANK, as "German Minister of State", according to the above mentioned Fuehrer decree, exercised his executive authority directly under HITLER, by whom he had been directly appointed, and from whom he received his directions without FRICK'S intervention, FRICK being in no way authorized to exercise any influence thereon. Considering this state of affairs, a charge against the defendant FRICK cannot be derived from document 3589 PS - USA exhibit No. 720.

I now come to the Prosecution's accusation that FRICK, by his membership of certain organizations, is responsible for certain criminal actions.

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Final pleading for Dr. Wilhelm Frick presented by defense attorney Dr. Pannenbecker.

The SS was one of these organizations emphasized by the Prosecution.
Frick has never been a member of it.
Simmilarly he was never a General in the SS, as stated by the Prosecution.
I might assume this to be merely a mistake on the part of the prosecution.
In any case The Prosecution did not submitt proof thereof.
Frick was likewise never a member of the SA, as shown - probably by mistake- in the chart which indicated Frick's membership of various organizations.
There is no proof of this.
The Prosecution has charged FRICK with being the supreme chief of the Gestapo, and therefore designated him as its member, on the strenght of the argument that since the appointment of HIMMLER in 1936 as Chief of the German Police, the Gestapo has been formally incorporated into the Reich Ministry of the Interior.
But the Gestapo had its own Chief in the person of Himmler, who alone issued orders, and his formal subordination to the Minister of the Interior, does not necessarily make him - the Minister of the Interior - a member of the organisation which was exclusively under HIMMLER'S orders. My colleague charged with the defense of the Gestapo will also have to deal with the character of this organization. As to the defendant FRICK, I have only to state that he held the formal position of a Reichsleiter in his character of Chairman of the Reichstag fraction of the NSDAP.
The Reichstag having lost its political importance since 1933, which fact needs no further explanation, Frick's position had also practically lost its importance and could no longer be compared with the position of a Reichsleiter, who administered important political branches.

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And finally Frick as Reich Minister was a member of the Reich Cabinet. Also with regard to the character and the authority of this organization I refer primarily to the statements which are yet to follow of my colleague, who has been named defense counsel of this organization.

I am referring here only to the testimony of Lammers and Gisevius, and furthermore to the excerpt from the book of this witness, which I have submitted as Exhibit No., 13 as evidence for the position and authority which the Reich Cabinet maintained toward the dictatorial practices of Hitler.

According to all this the defendant Frick appears as a personality, which certainly exerted a decisive influence on interior policy after this goal had been achieved.

All his measures, however, had inner-political aims; they were not intended to have anything to do with the foreign-political goal of a war of aggression and especially not with crimes against humanity, committed to further crimes against the peace or against the rules of warfare - and only in these cases would this court have jurisdiction according to article 6 of the statute, as has also been stated by the Prosecution.

When Frick realized that the policy had turned into a direction of which he could no longer approve, he tried to exert all his influence in order to introduce a change.

However, he then had to see more and more that he he could not find an audience in Hitler for his representations and complaints, and to the contrary, he had to realize that these complaints destroyed Hitler's confidence in him, as the latter preferred to have himself advised by Himmler and persons of similar attitudes, so that Frick finally was not received by

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prsented by defense counsel Dr. Pannenbecker.

Hitler anymore since the year 1937, if he wanted to present any complaints Frick then gave up such hopeless attempts to introduce a change in the situation, which would not have been changed by his resignation either, which according to the results of the evidence he had repeatedly offered in vain.

In this way his tragedy lies in his entanglement in a system, in the first steps of which he had participated enthusiastically and the development of which he had imagined to be different.

In any case it appears important to me in judging his personality and his actions, that this presentation of evidence which has gone on for months has not given any proof of the personal participation of the defendant in any crimes, either.

It is not without reason that John Gunther in the book "Inside Europe," which I have presented to the Tribunal as evidence, describes especially the defendant Frick as "the only honest Nazy." Gunther at the same place goes on to call him a "bureaucrat all the way through." Hitler himself always called him repeatedly the "paragraph scrounger," he, whom Frick - just about typically of him - had not met in any public assembly but in his office with the police in Munich in the year 1923. This man felt enthusiasm for the suggestive power of Hitler, for himself so distant, who with his big word appealed to his senses, his honor, and his patriotism.

It was Hitler who made him proud to be able to participate in the reconstruction of a German nation, which through strong armed forces was to be in a position to play a peaceful but yet active part in world politics.

However, it was also Hitler who understood to throw a scare into the citizen Frick about the supposedly threatening Bolshevist danger and

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whatever more ther existed of false phrases, twisted statements, and propagando-arts, and which also fooled men of reater mental height, who let themselves be driven along by the suggestive power of a Hitler, and who did not realize in time that they had subordinated themselves to the suggestive will of a criminal who was prepared to overthrow the pillars of civilization for his ideas and who finally would leave Germany behind in a monstrous spiritual and material field of rubble, to the overcoming of which this trial may also contribute through a sentence in accordance with law and justice.

s/ Dr. Pannenbecker

t/ (Dr. Pannenbecker)